

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1202V

Filed: May 31, 2019

UNPUBLISHED

JAMES CAPERTON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.

Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On September 26, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza (“flu”) vaccine administered on October 21, 2015. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 1, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On May 31, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$143,867.59, including

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

\$110,000.00 in pain and suffering, \$7,204.60 in lost wages, and \$26,662.99 in unreimburseable expenses.³ Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner the following:**

- 1. A lump sum payment of \$117,384.60 in the form of a check payable to petitioner, James Caperton.** This amount represents compensation for all damages that would be available under § 15(a).
- 2. A lump sum payment of \$23,121.99,** payable jointly to petitioner and to:

Novant Health Kernersville Medical Center
P.O. Box 11549
Winston-Salem, NC 27116
Account No: 2800179305

Petitioner agrees to endorse the payment to Novant Health Kernersville Medical Center.

- 3. A lump sum payment of \$3,361.00,** payable jointly to petitioner and to:

Piedmont Triad Anesthesia
145 Kimel Park Drive, Suite 120
Winston-Salem, NC 27103
Account No: 242125

Petitioner agrees to endorse the payment to Piedmont Triad Anesthesia.

The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ The award for past unreimbursable expenses is to be paid as follows: \$180.00 payable directly to petitioner, James Caperton; \$23,121.99 payable jointly to petitioner and Novant Health; and \$3,361.00 payable jointly to petitioner and Piedmont Triad Anesthesia. See Proffer at 1 n.1.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

JAMES CAPERTON,)	
)	
)	
Petitioner,)	No. 16-1202V
)	Chief Special Master
v.)	Nora Beth Dorsey
)	
)	
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S AMENDED PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items:

On April 28, 2017, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. On May 1, 2017, Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”). Respondent proffers that, based on the evidence of record, petitioner, James Caperton, should be awarded **\$143,867.59**, including \$110,000.00 in pain and suffering, \$7,204.60 in lost wages, and \$26,662.99¹ in unreimbursable expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

¹ The award for past unreimbursable expenses is to be paid as follows: \$180.00 payable directly to petitioner, James Caperton; \$23,121.99 payable jointly to petitioner and Novant Health; \$3,361.00 payable jointly to petitioner and Piedmont Triad Anesthesia.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through three lump sum payments as described below, and request that the special master's decision and the Court's judgment award the following:²

- (1) A lump sum payment of \$117,384.60 in the form of a check payable to petitioner, James Caperton. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled; and
- (2) A lump sum payment of \$23,121.99, payable jointly to petitioner and to:

Novant Health Kernersville Medical Center
P.O. Box 11549
Winston-Salem, NC 27116
Account No: 2800179305

Petitioner agrees to endorse the payment to Novant Health Kernersville Medical Center.

- (3) A lump sum payment of \$3,361.00, payable jointly to petitioner and to:

Piedmont Triad Anesthesia
145 Kimel Park Drive, Suite 120
Winston-Salem, NC 27103
Account No: 242125

Petitioner agrees to endorse the payment to Piedmont Triad Anesthesia.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, and future pain and suffering.

C. SALVATORE D'ALESSIO

Acting Director

Torts Branch, Civil Division

CATHARINE E. REEVES

Deputy Director

Torts Branch, Civil Division

GABRIELLE M. FIELDING

Assistant Director

Torts Branch, Civil Division

/s/ Camille M. Collett

CAMILLE M. COLLETT

Trial Attorney

Torts Branch, Civil Division

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Dated: May 31, 2019